Attached, please find a Word file with the comments submitted on behalf of the Louisiana District Export Council, Inc. with respect to the above captioned matter.

Sincerely,

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October 26, 2006

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U. S. Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20515

Attn.: Comments on the Tax Technical Corrections Act of 2006

Dear Chairman Grassley and Committee Members:

This submission is being made on behalf of the Louisiana District Export Council, Inc. ("LADEC"), a non-profit organization incorporated under the laws of Louisiana. The purpose of LADEC is to promote and encourage U.S. exports from Louisiana by: (1) supporting Louisiana based businesses and/or Louisiana produced goods and services so as to strengthen individual companies, stimulate U.S. economic growth, and create Louisiana based export related jobs; (2) supporting the activities of the U.S. Commercial Service ("USCS") at the Delta U.S. Export Assistance Center located in New Orleans, LA; and (3) initiating or supporting such other export related activities as the LADEC Board of Directors with the concurrence by a majority of its Members may decide from time to time. We appreciate this opportunity to express our views on a matter of great concern to a significant number of Louisiana's small business exporters.

On September 29, 2006, S. 4026, the "Tax Technical Corrections Act of 2006" ("the Bill") was introduced by Chairman Grassley and Ranking Member Baucus. On the same date, the Chairman and Ranking Member requested written public comments for the record from all parties interested in S. 4026. The Website of the Committee on Finance advises that such comments must be submitted by the close of business on Tuesday, October 31, 2006. This submission is being made within that time period.

Concerns re: S. 4026, Section 7

Included within its proposed "corrections" S. 4026 includes Section 7, which dramatically affects the tax treatment of dividends received by non-C corporation shareholders of Interest-Charge Domestic International Sales Corporations ("IC-DISCs"). This class generally includes those small business taxpayers receiving their IC-DISC dividends through an S corporation, or a partnership-owned IC-DISC. As proposed, Section 7 would deny "qualified dividend" treatment under Internal Revenue Code of 1986, as amended ("Code"), Section 1(h)(11)(B), for all IC-DISC dividend distributions.* Section 7 provides that such changed treatment be effective with respect to such "dividends received on or after September 29, 2006, in taxable years ending after such date."

It is respectfully submitted that Section 7 is not a "technical", but rather a substantive, change in the tax law treatment of all affected individuals receiving dividends from an IC-DISC. A change with such a substantial impact, although on an admittedly small segment of taxpayers, should neither be part of a "technical corrections" Bill, nor should it bear an effective date that, although stated as prospective from the date of introduction, has the practical effect of retroactivity to January 1, 2006.

Affected taxpayers have structured their eligible export transactions for calendar year 2006 in reliance on the law as it has existed for over three years, with the reasonable expectation that their IC-DISC tax transactions and dividend distributions for the calendar year 2006 would be taxed in accordance with existing law.

In accordance with the applicable IC-DISC transfer pricing rules of the Code, the applicable U.S. Treasury regulations, and IC-DISC related pronouncements of the Internal Revenue Service, these calculations are made, inter-company transaction are effected, and IC-DISC dividends are paid, generally only at or near the end of the calendar year concerned, when the required information is first available with reasonable certainty. Indeed, the IC-DISC "gross receipts" and "assets tests" of Code section 992(a) (1) (A) and (B) for DISC qualification can only be made at the end of the year. The practical consequence of enacting Section 7 of the Bill with its currently stated effective date would therefore be to impose a significant tax increase, in a retroactive fashion, on all those affected taxpayers.

Current Law Provisions

The IC-DISC provisions of Code sections 991-997, as now in effect, provide tax incentives for small businesses with respect to their export of U.S. manufactured goods and certain export related services, by permitting them to defer paying income tax on a limited amount of export profits. They may accumulate within the IC-DISC otherwise taxable profits attributable to qualified export receipts not exceeding $10 million per calendar year, but only if substantially all such accumulated DISC profits are reinvested in expanded export assets. The price of such deferral is the payment of an interest charge at an attractive Treasury Bill rate. Code section 995(f).

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* The practical effect of this provision would be to more than double the taxation of such affected individuals by taxing their IC-DISC dividends at as high as a 35 percent marginal rate rather than at the 15 percent rate currently in effect for qualified dividends.

Alternatively, the IC-DISC may distribute some or all of such export profits as dividends to the IC-DISC's shareholders. Under current law such shareholders who are individuals, including those owning their interests in an IC-DISC through a flow-through entity, are taxed at a maximum rate of 15 percent on such dividends. Export profits of an IC-DISC on its export receipts in excess of $10 million per year are deemed distributed to the IC-DISC shareholders, who are taxed on such distributions as dividends. Code section 995(b) (1). If such shareholders are individuals, the current maximum rate of 15 percent also applies to such "deemed distributions".

Many U.S. manufacturers, particularly those with expanding businesses, may not be overly burdened by the reinvestment requirement for accumulating export profits within their IC-DISC subsidiaries. Such taxpayers should also now be deriving benefits from the domestic production deduction provided by Code section 199.

Need for a Different Approach to Solving the Perceived Problem

Many architectural and engineering firms, and small wholesalers and retailers that find foreign markets for, and then buy and immediately export, U.S. manufactured goods on a C.O.D. or short-term Letter of Credit basis, have neither a significant investment in export inventories nor require warehouses, nor are they eligible for the Code section 199 domestic production deduction with respect to their export sales or services. In addition, some "manufacturers" may not require significant investments in materials, or bricks and mortar type export assets, yet incur substantial additional costs in developing an export market for their wares. So these taxpayers, due to the peculiar circumstances of their export businesses, and although included within the intended recipients of the IC-DISC export tax incentives, are often unable to meet the reinvestment requirements and will be effectively shut out from all export tax incentives unless some form of meaningful, if limited, small business exception is made in the Bill's Section 7.

It is respectfully submitted that a responsible way to deal with the unintended consequences to the U.S. Treasury from granting access to the 15 percent qualified dividend rate for individuals would be to curtail access to this preferential treatment on unlimited amounts of deemed distributions from an IC-DISC, preferably on a truly prospective basis.

Recommended Solutions

The preferred 15 percent dividend rate would be retained, but only with respect to a very limited amount of dividends to benefit those small businesses that would otherwise be left out of the IC-DISC export tax incentive. This could be accomplished by retaining the preferred 15 percent rate on distributions of "DISC income" under Code section

995(f)(1), but denying it with respect to "deemed distributions" under Code section 995(b)(1).[†]

The effect of such a limited change would be to provide for continuation of the 15 percent rate with respect to annual dividends of the IC-DISC profits from no more than $10 million of qualifying export receipts of the IC-DISC and its related supplier(s) within a modified controlled group. See Code section 995(b) (4).

For the typical small business exporter with, say, a 4% net-to-gross ratio, this would have the maximum effect of a 20 percentage point rate reduction in dividends of $400,000 of annual export profits, or an aggregate group tax reduction of $80,000. All export profits on the group's receipts in excess of $10 million each year would then be subject to the full ordinary income tax rate of up to 35 percent. Of course for many, indeed most, affected small businesses the actual benefit would be considerably less: their actual export sales volumes, the profits on which the beneficial rate would apply, would be considerably less than the annual maximum of $10 million.

These changes should be made prospective in a meaningful way, by making them applicable to dividends paid in taxable years of IC-DISCs beginning after the date of introduction (or, more preferably, after the date of enactment).

In order to accomplish these recommended changes,

(1) The indented sub-clause in paragraph (a) of Section 7 could be changed to read:

> '(IV) any dividend received from a corporation which is a DISC or a former DISC, as defined in section 992(a), to the extent such dividend is not paid out of its DISC income for such year (as defined in section 995(f) (1)).'

And,

(2) Paragraph (b) of Section 7 should then be changed to read:

'(b) Effective Date-The amendment made by this section shall apply to dividends paid in IC-DISC taxable years beginning after the date of enactment.'

* * * * *

[†] The sole remaining beneficiaries of this limited access to the 15 percent qualified dividend rate would be individuals, and the amounts of tax benefits derived, in the aggregate, would be quite small in macroeconomic terms. Nevertheless, such treatment would still provide a limited but meaningful export tax incentive for those originally intended beneficiaries of the IC-DISC provisions. This class of taxpayers was certainly not the object of the World Trade Organization complaints concerning export tax incentives given to major U.S. corporations, and it is anticipated that there should be no reprisals within the WTO from the retention of such limited benefits to an even more limited group of individuals.

On behalf of the Louisiana District Export Council, Inc., and the small business exporters of Louisiana who are attempting to recover from the ravages of Hurricane Katrina, we earnestly solicit your adoption of the proposed changes as discussed above, if it is found necessary to make any change to the existing rules regarding the tax treatment of IC-DISC dividends. Thank you for your consideration of these views.

Of course, if you have any questions or would consider further discussion helpful, the undersigned is available to your Staff at the above e-mail address or by phone at 251-625-4603.

Respectfully submitted,

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